

Message Text

PAGE 01 STATE 189438
ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01
CIAE-00 COME-00 DODE-00 FPC-01 H-01 INR-07 INT-05
L-03 NSAE-00 NSC-05 OMB-01 PM-05 OES-07 SP-02
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DRAFTED BY EB/ORF/FSE:PEBARBIAN:MEP
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EUR/CAN - JBROH-KAHN

-----080005 102249Z /64

O 102219Z AUG 77
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA IMMEDIATE

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E.O. 11652: N/A

TAGS: ENRG, CA

SUBJECT: SENATOR STEVENS AND THE PIPELINE TREATY

REF: OTTAWA 7254

1. COMMENTS ON LEGAL BASIS FOR POINTS DESCRIBED IN
KIPLING ARTICLE WILL BE PROVIDED AS SOON AS POSSIBLE.
UNTIL LEGAL ANALYSIS IS COMPLETED, FOLLOWING BACKGROUND
INFORMATION MAY BE HELPFUL TO EMBASSY, BUT THE DEPARTMENT
DOES NOT BELIEVE THIS ISSUE CAN USEFULLY BE DEBATED IN
PUBLIC.

2. STEVENS INTRODUCED, THEN UNILATERALLY WITHDREW, HIS
RESERVATION TO PIPELINE TREATY. TREATY PASSED SENATE,
WITHOUT STEVENS RESERVATION, BY VOTE OF 92 TO 1.

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PAGE 02 STATE 189438

FOLLOWING IS TEXT OF RESERVATION:

EXCEPT THAT NO TRANSIT PIPELINE TO CARRY GAS FROM
PRUDHOE BAY ACROSS CANADA TO DOMESTIC MARKETS IN THE
LOWER 48 STATES SHALL BE APPROVED BY THE UNITED STATES
WITHOUT FIRST RECEIVING ASSURANCES FROM THE GOVERNMENT
OF CANADA, IN AN APPROPRIATE PROTOCOL OR OTHER INTER-
GOVERNMENTAL ARRANGEMENT WHICH HAS BEEN RATIFIED BY THE
UNITED STATES SENATE, THAT (1) NO PART OF THE COST OF

THE SETTLEMENT OF NATIVE LAND CLAIMS IN CANADA WILL BE ASSESSED AGAINST SUCH TRANSIT PIPELINE AND PASSED THROUGH TO UNITED STATES GAS CONSUMERS; (2) NO CHARGE FOR COMPENSATION FOR THE INDIRECT SOCIO-ECONOMIC COSTS OF THE PIPELINE WILL BE ASSESSED AGAINST SUCH TRANSIT PIPELINE AND PASSED THROUGH TO UNITED STATES GAS CONSUMERS, AND (3) THE GOVERNMENT OF CANADA WILL HOLD HARMLESS AMERICAN COMPANIES AND GAS CONSUMERS FROM ANY FEE, DUTY, TAX, OR OTHER MONETARY CHARGE IMPOSED BY ANY GOVERNMENTAL AUTHORITY IN CONTRAVENTION OF THIS AGREEMENT. END TEXT.

3. DURING DEBATE, STEVENS ENTERED IN RECORD TEXT OF EXCHANGE OF LETTERS RELEVANT TO THE \$200 MILLION SOCIO-ECONOMIC PAYMENT. TEXT OF LETTERS FOLLOWS:

LETTER FROM SPARKMAN/STEVENS TO VANCE, JULY 22, 1977:

DEAR MR. SECRETARY:

AS YOU KNOW, THE AGREEMENT BETWEEN THE UNITED STATES AND CANADA CONCERNING TRANSIT PIPELINES IS BEING CONSIDERED BY THE SENATE. THE SENATE WILL ALSO SHORTLY BE LIMITED OFFICIAL USE
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PAGE 03 STATE 189438

CONSIDERING THE SELECTION OF A TRANSPORTATION SYSTEM TO DELIVER ALASKAN NATURAL GAS TO THE LOWER 48 STATES PURSUANT TO THE ALASKA NATURAL GAS TRANSPORTATION ACT (P.L. 94-586). ONE OF THE PROPOSED PIPELINES THROUGH CANADA HAS RECEIVED CONDITIONAL APPROVAL BY THE NATIONAL ENERGY BOARD OF CANADA. THE NEB HAS APPROVED A MODIFIED ALCAN SYSTEM ON THE CONDITION, AMONG OTHERS, THAT THE PIPELINE COMPANIES AGREE TO PAY UP TO \$200 MILLION TO COVER THE INDIRECT SOCIO-ECONOMIC COSTS OF THE PIPELINE.

THE NEB DECISION RAISES THE FOLLOWING VERY IMPORTANT QUESTIONS CONCERNING THE RELATIONSHIP BETWEEN THE AGREEMENT CONCERNING TRANSIT PIPELINES AND THE DECISION ON THE SELECTION OF A PIPELINE TO DELIVER ALASKAN NATURAL GAS:

1. DOES THE PROVISION OF ARTICLE III OF THE AGREEMENT, WHICH PROHIBITS THE IMPOSITION OF ANY DIRECT OR INDIRECT TAX OR OTHER MONETARY CHARGE, ON/OR FOR THE USE OF A TRANSIT PIPELINE UNLESS IT IS APPLICABLE TO OTHER SIMILAR PIPELINES, PRECLUDE THE IMPOSITION BY CANADA OF THE \$200 MILLION CHARGE?
2. IF ARTICLE III DOES NOT PRECLUDE THE IMPOSITION OF SUCH A CHARGE, PLEASE SPECIFY THE REASON FOR YOUR CONCLUSION?
3. IF THE \$200 MILLION CHARGE CAN BE IMPOSED CONSISTENT-

LY WITH THE AGREEMENT, DOES THIS MEAN THAT CANADA CAN IMPOSE OTHER CHARGES, SUCH AS TO COVER THE PAYMENT OF ALL OR PART OF THE COST OF SETTTLING CANADIAN NATIVE CLAIMS?

4. IF ARTICLE III DOES NOT PRECLUDE IMPOSITION OF THE \$200 MILLION CHARGE AND OTHER CHARGES, ARE OTHER AGREEMENTS BEING NEGOTIATED WITH CANADA TO ESTABLISH A LIMIT ON THE OTAL COST THAT CANADA CAN IMPOSE ON THE LIMITED OFFICIAL USE
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PAGE 04 STATE 189438

MODIFIED ALCAN PROPOSAL APPROVED BY THE NEB?

WE WOULD APPRECIATE IT IF ANSWERS TO THESE QUESTIONS COULD BE PROVIDED BEFORE CONGRESS CONSIDERS THE AGREE-
MENT CONCERNING TRANSIT PIPELINES. AT SENATOR STEVENS' REQUEST, CONSIDERATION OF THAT AGREEMENT HAS BEEN DELAYED PENDING YOUR REPLY. AS WE ARE CERTAIN YOU WILL REALIZE, YOUR RESPONSE WILL HAVE A MAJOR IMPACT ON THE QUESTION OF WHETHER SENATOR STEVENS AND OTHERS SHOULD OFFER A RESERVATION TO PREVENT CHARGES, SUCH AS THE \$200 MILLION FROM BEING ASSESSED AGAINST THE MODIFIED ALCAN PIPELINE, AND TO PREVENT THE ASSESSMENT OF ANY PART OF THE SETTLEMENT OF THE CANADIAN NATIVE CLAIMS AGAINST A U.S. PIPELINE.

LETTER FROM BENNET TO SPARKMAN AND STEVENS, JULY 29, 1977.

DEAR SENATOR STEVENS:

SECRETARY VANCE HAS ASKED ME TO RESPOND TO YOUR LETTER OF JULY 22, CONCERNING THE UNITED STATES-CANADA TRANSIT PIPELINE AGREEMENT AND THE TRANSPORTATION OF ALASKAN NATURAL GAS ACROSS CANADA. I AM SENDING A SIMILAR RESPONSE TO SENATOR SPARKMAN.

WITH REGARD TO THE RELATIONSHIP BETWEEN ARTICLE III OF THE AGREEMENT AND THE PROPOSED \$200 MILLION CHARGE TO ALCAN FOR INDIRECT SOCIO-ECONOMIC COSTS, WE HAVE TAKEN THE POSITION WITH THE CANADIANS THAT ARTICLE III OF THE AGREEMENT WOULD PRECLUDE THE IMPOSITION ON THE PIPELINE OF THE CHARGE UNLESS SUCH A CHARGE IS APPLICABLE TO SIMILAR PIPELINES IN CANADA. IN RAISING T;IS ISSUE WITH THE GOVERNMENT OF CANADA WE HAVE STRESSED THAT ITS RESOLUTION, AND ANY OTHER SIGNIFICANT COSTS OR UNCER-
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PAGE 05 STATE 189438

TAINTIES ASSOCIATED WITH THE TERMS AND CONDITIONS PROPOSED BY THE NEB, WILL NECESSARILY BEAR UPON THE PRESIDENT'S

DECISION.

WE HAVE ALSO DISCUSSED THE QUESTIONS OF NATIVE CLAIMS WITH THE GOVERNMENT OF CANADA. THEY HAVE INDICATED THAT THEY DO NOT REGARD THE COST OF SETTLEMENT OF NATIVE CLAIMS AS BEING A COST OF THE TYPE WHICH SHOULD BE ASSESSED TO THE PIPELINE.

AS ASSISTANT SECRETARY KATZ INDICATED DURING HIS TESTIMONY ON THE AGREEMENT BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON JUNE 7, WE DO NOT BELIEVE THAT THE AGREEMENT NECESSARILY RESOLVES ALL OF THE QUESTIONS RELATED TO A POSSIBLE TRANSIT PIPELINE ACROSS CANADA. A PROTOCOL OR OTHER INTER-GOVERNMENTAL ARRANGEMENTS MAY WELL BE NEEDED. END TEXT OF LETTERS.

4. STEVENS STATEMENT ON INTERPRETATION OF THE BENNET LETTER AND TREATY OBVIOUSLY INTENDED TO FURTHER EL PASO'S CHANCES FOR APPROVAL, BUT MAY ALSO HAVE THE EFFECT OF STRENGTHENING U.S. NEGOTIATING POSITION. IN AS MUCH AS SENATE APPROVED RATIFICATION OF THE TREATY WITHOUT RESERVATION, DEPARTMENT BELIEVES THAT ITS NEGOTIATING FLEXIBILITY HAS NOT BEEN DIMINISHED.

5. FOLLOWING STEVENS STATEMENT, SENATOR BAYH MADE FOLLOWING POINTS:

-- STEVENS RESERVATION UNNECESSARY BECAUSE IT IS CONTRARY TO THE PRINCIPLE THAT THOSE WHO BENEFIT FROM A PROJECT SHOULD BEAR ITS COST

-- STRIP MINING ACT AND COSTAL ZONE MANAGEMENT ACT CONTAIN MECHANISMS FOR COMPENSATING SOCIO-ECONOMIC IMPACTS IN U.S.
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PAGE 06 STATE 189438

-- LYSYK REPORT RECOMMENDS A METHOD OF COMPUTING PROPERTY TAXES WHICH IS IDENTICAL TO APPROACH ADOPTED BY THE STATE OF ALASKA FOR THE TRANS-ALASKA OIL PIPELINE. CHRISTOPHER

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Control Number: n/a
Copy: SINGLE
Sent Date: 10-Aug-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
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